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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-18-2003

Reported in : (2004)(92)ECC365

Judge : N T C.N.B., P Chacko

Appellant : S.S. Poly Printers and Jindal

Respondent : Cce

Judgement :

1. Both these appeals are directed against the same order of adjudication. Accordingly, they are taken up for consideration together for disposal by this common order.

2. The appeals challenged the findings of the Commissioner with regard to the eligibility for exemption under Notifications No. 15/94-CE dated 1.3.94 and 8/96-CE dated 23.7.96 as well as the quantification of the value of job work. First, the findings themselves: We reproduce paras 4.3 and 4.4 of impugned order which contain the findings: "4.3 During the personal hearing on 14.2.2003 and vide their submissions dated 19.2.2003 the following two issues were raised (a) the applicability of Notification No. 15/94 & Notification No. 8/96 and exclusion of value of job charges for printing of poly bags.

(b) Applicability and the correctness of figures of job charges collected especially by M/s. S.S. Polyprinters in the years 94-95, 95-96 as certified by the Chartered

Accountant.

4.4 With regard to the first issue, I find that the three noticees had not disputed the collection of printing charges on laminates which had been classified under CSH No. 3920.30 in the Show Cause Notice during the personal hearing before the Adjudicating Authority or at the Appellate stage, hence it cannot be considered during this de novo proceedings. Further, the value of goods computed on the basis of formula adopted in the Show Cause Notice on account of printing charges is not altered. The formula itself had also not been contested before the CEGAT."

4.4 With regard to the second issue, I find that the balance sheet are statutory records and profit and loss account as given in them would normally not be wrong for two consecutive years that is 1994-95 and 1995-96, as certified by the Chartered Accountant issued in the year 2003. The defence of the party on this account is not acceptable." 3. Ld. Counsel representing the appellants submits that the above findings are not sustainable at all. It is his contention that the issue relating to the applicability of the notifications being fundamental to determine the rate and amount of duty, the same could be raised at any time and the Commissioner was not justified in holding that that issue could not be raised at the stage before her. With regard to computation of value, the contention of the Ld. Counsel is that the adjudicating authority could not have gone by the Balance Sheet alone for determining the value of the goods manufactured by the appellants inasmuch as, for the purpose of central excise, separate statutory records have been prescribed and the assessee was keeping day-to-day record of production. It is being submitted that the Commissioner could not have relied upon the Balance Sheet figures in preference to those documents, particularly, in view of the fact that all those records have been seized by the central excise authorities and they are still available with them.

4. We have perused the records and have heard the Ld. SDR also. We are in agreement with the Ld. Counsel for the appellants on both the issues. Notifications in question fixed effective rates of duty on the goods under assessment. Therefore, no assessment could be carried out without taking those notifications into account. In fact, the issue of a show-cause notice itself, without taking these notifications into account, was improper and careless on the part of the Revenue

authorities. In such a situation, we are unable to find any basis for the finding reached by the Commissioner. With regard to the issue of quantum of job work carried out also it is to be noted that while Balance Sheet was a statutory record under the Company Law, Central Excise Act prescribed thereunder the statutory records relating to daily production, clearances and payment of duty. The more relevant record for levy of excise duty is the statutory records prescribed under the Central Excise Act and Rules. Further, private records of the assessee as orders for job work, jobs carried out, payment received etc. are available. These records gave a clearer picture of manufacture and are more relevant for central excise, which is a levy on manufacture, rather than the Balance Sheet which showed consolidated financial position. For this reason, we are unable to sustain the finding that the amount of duty should be computed based on the figures in the balance sheet along.

5. In view of what is stated above, the appeal is allowed by way of remand. The Commissioner shall take up computation of duty amount afresh based on the records prescribed under Central Excise Act and the private records of the assessee relating to production, sales etc. The duty demand shall also be worked out after taking into account Notifications No. 15/94-CE and 8/96-CE. The Commissioner shall also pass a fresh order on penalty keeping in mind the revised duty amount.

A fresh order shall be passed within a period of 3 months from the date of receipt of a copy of this order.

6. It is further ordered that duty liability and penalty determined as above shall be adjusted from the pre-deposit already made and amount, if any, found in excess shall be returned to the assessee.

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